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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,857	10/27/2003	James D. Krol	6159	9239

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EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/692,857

Applicant(s)

KROL, JAMES D.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over the recipe for "Crustless Pizza" in view of the disclosure by the Google Group on April 1, 2003.

The recipe for Deep Dish Pizza teaches sprinkling shredded cheese over the bottom of dish, spreading on pizza sauce, sprinkling mozzarella, piling on topping and baked until bubble and brown. The pizza is allowed to stand for 10 minutes before cutting.

The recipe does not teach forming a mixture of high gluten flour and baking powder, the baking temperature as claimed, freezing, thawing and reheating.

The disclosure on April 1 2003 shows that it is known to make low carbohydrate crust using a little flour and some whey protein.

It is known in the art to make low carbohydrate pizza by making low carbohydrate crust using little flour and whey protein. It would have been obvious to one skilled in the art to make this crust when making the Deep Dish Pizza when desiring to have different texture and flavor. The pizza is still low in carbohydrate because only little flour is used. It would have been obvious to use high gluten flour because such flour is well known in the art and its use further reduces the carbohydrate content. It would have been obvious to add baking powder to create bubbling appearance or to give little rising to make a firm structure. This is well known in the art as it is common to add baking powder to product containing flour. It would have been obvious to make up a batch of flour for use in multiple times; this would have been a matter of preference. It would have been obvious to select specific amount of flour depending on the carbohydrate

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content wanted. Since little flour is used, it is obvious the flour can be as little as 1 teaspoon. It would have been obvious to use double acting baking powder when one wants a faster reaction. It would have been obvious to use higher temperature for shorter period of time. It would have been obvious to freeze the product for long term storage. When the product is frozen, it would have been obvious to thaw and reheat it to prepare the product for consumption.

In the response filed 6/16/06, applicant argues the " Deep Dish Pizza" recipe teaches away from a dry mixture of formulated flour and cheese by disclosing a liquid egg mixture being added to the cheese base layer. It is not clear how applicant view this as teaching away from a dry mixture. The recipe teaches to form a base layer of cheese over the bottom the dish. The cheese is a dried layer. The egg mixture is placed on the cheese layer; it is not the base layer. The disclosure by the Google group indicates that pizza crust formed of little flour and whey protein is known. Thus, it would have been obvious to add a little flour to the Deep Dish pizza crust to obtain a different texture in the crust than just from the cheese alone. Applicant argues the Google Group disclosure does not disclose a base layer being a formulated flour and cheese and does not disclose a food product or pizza without a crust. The Google disclosure is a low carbohydrate pizza crust with the crust being made of little flour and some whey protein. Since the crust is made of little flour and protein, it is essentially without a crust because regular pizza crust is not made out of just a little flour. The recipe for Deep Dish pizza shows the use of cheese as the base layer; the Google disclosure shows the use of little flour and protein as the base layer. Both recipes are for low carbohydrate pizza; thus, it

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would have been obvious to one skilled in the art to combine the ingredients to make the base layer to contain both cheese and little flour to obtain different texture, flavor and taste.

Applicant's arguments filed 6/16/06 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 1, 2006

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
*Group 1700*